REFLECTIONS

UPON THE

Administration of Justice

IN

PENNSYLVANIA.

BY A CITIZEN.

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REFLECTIONS, &c.

A CITIZEN of New York not long ago remarked to me, that, wherever he had been in Pennsylvania, he heard complaints of the bad administration of the laws. In New York, he said, these complaints were not heard. The people there were not only satisfied with their courts of justice, but seemed to take a pride in them. It must be something unusual that would delay the decision of a suit, in that state, longer than a twelvemonth; and, a large majority of the causes was disposed of in nine, and many of them in six, months after they were brought. And yet, he said, the systems of law in the two states were the same, or did not materially differ. Each state had, in an equal degree, its republican institutions and manners. Each has also had an equally

republican administration of its government. New York boasts her attachment to the freest systems in politics and jurisprudence. Her Clintons, her Livingstons, her Spencers have been her public servants. These are the men in whose hands her interests have prospered. How then does it happen that, in two contiguous states, possessing the same kind of government and giving their confidence to the same kind of men, there should be, in a matter so essential, this striking difference; that in the one, the laws should be so administered as to yield benefits to all, while, in the other, their tardy or oppressive execution are the subject of universal complaint.

To these remarks, from the citizen of another state, may be added a fact which cannot escape observation at home. The circuit court of the United States for the Pennsylvania district holds its sessions twice a year in Philadelphia. In this court the same general law, and precisely the same forms of doing business, prevail, as in the courts of the state; the attorneys are the same; the very jurors

the same. And yet, in this court, we never hear of procrastination. Actions are brought and pass through all the different stages to their final issue, in little more than six months. At every court the trial list is gone through. Every suitor has a hearing, and delinquent defendants fear, in this court, the speedy step of justice. Whence can this arise? If a citizen of Philadelphia be kept out of his rights and resort to the court of common pleas, or to the supreme court, of the state, it may be two, three, five, years before his cause is tried. Let the injury he receives have come from a foreigner, or from a citizen of another state, which gives him the privilege of resorting to the circuit court, and, in six months, he gets a hearing. This too while both tribunals are regulating their proceedings and grounding their decisions upon one and the same body of law. It may be, both sitting in the very same courthouse.

To the example of New York might be added that of Virginia; of New Jersey; of Maryland; of Delaware, and probably of most of

the other states in the union, where the laws appear to be well administered. Pennsylvania contains as many enlightened citizens as any of her sister states. The industry of her population; her institutions of humanity and science; the number and ability of her presses; her mechanical ingenuity; her commerce; are the marks of her present and the promises of her future standing. Her character abroad cannot be behind that of her sister states. It would seem as if, from some advantages in her situation, or, possibly, from the fame of her venerable founder, she were to be singled out, from the American confederacy, by the enlightened emigrant as the spot of his retreat. Her soil contains the ashes of a Priestly, and the sword of Moreau has been rested upon the banks of her Delaware. But it is not to the most enlightened men always to tread the best path. Sometimes the very zeal for useful discovery may give a direction to their steps, which reflection would alter. That there is some great defect in the administration of the laws in Pennsylvania is admitted by all. Where

this defect lies is not, perhaps, by all, so readily perceived. But it is a subject that deserves the attention of every Pennsylvanian, and should be considered with candour. Every man who handles it should feel that he is embarking in a highly interesting cause, and, in the liberal spirit of a philosopher and patriot, should endeavour to forget every former prepossession. Such a course alone can promise useful results.

It does not appear, from looking into the history of our state in more early times, or, from conversing with such of our citizens as are advanced in years, that there was, formerly, any suffering in Pennsylvania from a bad administration of the laws. The complaint has grown up since the revolution, and has been heard, chiefly, within the last few years. Connected with this remark there is something that may aid in throwing light upon the causes which produce the impediments to justice, now so deeply felt.

The present constitution of the state was formed in the year 1790. The system of

courts and judges, as established by that constitution, although upon the whole acquiesced in by its framers, was not, at that day, regarded as more than adequate to the necessities of the people. Indeed the contrary was rather the case. As the history of the day will show, one of the objections to it then was, that it would be found too limited; that it was not, even at that time, calculated to meet all the wants of our population. That its tribunals were not sufficiently spread or its officers sufficiently numerous to ensure a prompt dispensation of justice; bringing it, as it should be, to every man's door. The objection, as then applicable, has the countenance of public documents. In many, if not all, the communications made to the assembly by governor Mifflin, in his time, at the opening of the sessions, this subject is brought into view. He speaks of the defects in the Judiciary; of its incompetence; that it was unequal to the exigencies of the people; and, with a frequency that manifests, at so early a day, the inconvenience, recommends to the legislature to add to the

number of courts, and make such reform in them as public urgency required.

Admit, for a moment, that this part of the government was too limited at the time of its adoption, and what will be the inference? In 1790 Pennsylvania contained not more than 300 or 320,000 inhabitants. Its present population cannot fall much short of three times that number. This augmentation is sufficient to press down all the institutions of government not marked by a correspondent extension in size. As it respects the judiciary branch it forms, in itself, a power sufficient to stop its motion. Such an addition of inhabitants has brought with it, as a little calculation would show, an increase, in the ratio of tenfold, of the agricultural, the manufacturing and the commercial occupation of the state; it has enlarged, in the ratio of tenfold, the scope of business and wealth; raised, in a similar way, all the combinations of society and art. With these things, as the passions of men are not stationary, it may be justly estimated that the sources of legal dispute have also had, in a tenfold

degree, their increase. And yet the judiciary has continued the same. No extension of its branches to keep pace with the advancement of every thing else. I say continued the same. This may require some explanation. The legislature, not inattentive to so important a subject, have passed laws at several sessions, within the last few years, for new modelling the courts. The districts into which the state was originally divided, have been altered and increased. With the increase of the people in some particular parts of the state, and as new counties were laid off, some extension of the courts became indispensable. But, it was, at most, partial, and chiefly adapted to certain local alterations which the filling up of new territory made necessary. An adequate provision for the increased population and increased business of all parts of the state, it is evident, has not been made.

Granting, however, that this partial increase has given, to all the counties, full relief, the great defect is yet to be noticed. The first district, consisting now of the city and county

of Philadelphia, has been left wholly without remedy. Here it is that the administration of the laws has become almost hideous; the scoff, and with reason, of every one. Here it is that the honest man is at the mercy of his litigious neighbour, who may execute upon him his threat of a lawsuit, six years in continuance and of burdensome expense; a lawsuit by which his pockets will be drained, and his time consumed by an endless attendance upon courts. Here it is that a claim of property or right is sometimes abandoned in preference to encountering the lapse of time, the heavy cost and the numberless vexations through which alone a legal decision can be had. Here it is that the most valuable blessing of government, the safeguard of the law, is, in too many instances, not to be found. In the midst of a country whose other systems are so good, here it is, that the reproach of the worst of governments in the worst of times has place; for, to speak, not the language of prejudice or heat, but that which truth equally dictates and deplores, here it is, that, in many, very many instances, the

poor man dare not try an appeal to law with his richer neighbour.

With regard to this first district a fact is to be noticed, which cannot fail to strike, with great force, every dispassionate mind. It has just been observed that the several laws passed to meliorate the condition of justice throughout the state, have left the city and county without remedy. More than this is the case. It is alike extraordinary and true, that this district is in a worse situation now, in regard to its concerns of justice, than it was at the time the constitution was framed. At that time there existed not only a court of common pleas, but a supreme court, exercising jurisdiction, in the first instance, over all matters of dispute arising within the city and county. This court held three regular terms in the year, in the city, for the trial of facts, having the power also to hold additional courts of nisi prius whenever necessary. At present, although the duties of the president of the court of common pleas for this district are, to be sure, concentrated to the city and county, without being spread over, as they

were at first, some adjoining counties, yet, the original jurisdiction of the supreme court is at an end; so that, in fact, the courts for the despatch of business in the city and county have been reduced in number. Can it be? Are the opportunities of justice fewer now in the city of Philadelphia than they were in the year 1790? in Philadelphia then containing 40,000 inhabitants, now 100,000? in Philadelphia which has witnessed such an increase in numbers, in business, in opulence? not more judges, not more courts now, than it was thought fit to establish when the town was but little more than a third of its present size, not to speak of the increase of the county also? One of two things must follow. Either the system established for this district in 1790 must have been most unnecessarily, not to say wantonly, large, and organized at a waste of the public money; to think which has probably never occurred to any one: or, if this were not the case, the consequence certainly is, as the system has been narrowed rather than increased, that it must, at present, be out of all propor-

tion to the business required to be done. That it is idle to suppose that the same number of courts and judges, who were required, and who were not more than sufficient, to execute the laws in a place when it contained 40,000 people, can be equal to the task when the numbers have become nearly three times greater. And, if the remark be applicable, supposing them to have continued the *same*, what are we to say where they have become *fewer?* Let this principle of stopping relative increase be carried into mechanical life; apply it to the mason, the carpenter or the smith, and it requires no argument to perceive what inconvenience would follow. In a society rapidly progressing, social and civil wants experience a like augmentation with those that are personal and domestic.

Hence it is, that, in Philadelphia, lawsuits now load the records of the court with such accumulation. The suitor repairs to the court-house, term after term, only to experience new delays. The very walls of it become disagreeable to him. He leans over the bar hour

after hour and day after day, hope whispering a little more patience to him; but hope does nothing but deceive him. He waits and waits, until at length the trial period have run out. After having already submitted to the most discouraging disappointments he finds his chance of trying his cause at another and another term still gone by. And what is the reason of his disappointment? Perhaps he was not prepared. Yes, every thing was at hand, his papers, his witnesses, his attorney;—no industry was spared to get completely ready. Perhaps the judges were indolent; or unwilling to do business, and would not give him a hearing? Not so; out of the fifty two weeks in the year, the court of common pleas for the city is more than forty weeks in constant session, from ten o'clock in the morning until night; a measure of employment calculated to fatigue the minds and impair the constitutions of any set of men. The judges go through as much business as they can. Those of the first district, at least, are not chargeable with delay. What then is the reason that his cause was not

tried? Why, simply, because it was not reached. This is always the phrase. And no wonder it was not *reached;* for, where there are sometimes known to be *more than one hundred causes* set down for trial *on one day*, it would be strange if more than a twentieth part of them were reached. The judges may labour; the attorneys may labour; the suitors may urge, may remonstrate, may clamour; witnesses, disheartened at being taken from their business, perhaps for an entire week, at every new sitting of the court, may become reluctant or contumacious; it is all in vain, the business is not, cannot, be done; it has grown to be an overmatch for the greatest industry, and forms an evil, which, far from becoming less, is felt by the people, and, until things be changed, must continue to be felt by them, every year and at every court with fresh severity.

This plain view of the subject would appear to suggest a natural remedy. If, with the increase of our population, one court be found not sufficient, establish two; establish

a third; establish a fourth; you can never have too many while the public business gives them employment, and you will always have too few, where, although they are diligent, the public business is not done. Other methods have been adopted which have not, as yet, had the desired success. This seems to dictate the expediency of striking out another course of alteration and reform. What, in the whole compass of the wellbeing of a state, claims to stand so high as the punctual administration of the laws! To effect this, what can so usefully employ the attention of a legislative body; what so nobly engage the representatives of a free people? Standing in their equal majesty, to such a people the only rule, the only superior, is the law. How excellent is law in its pure and stedfast distribution! her "seat the bosom of God, her voice the harmony of the world." Shall thousands upon thousands be every year expended upon roads; upon canals; upon bridges; upon such public works? this indeed is proper and shows a provident care of the public interest; but, compared with the

security of justice, where is the liberal mind, where the true republican but admits they are secondary? Though so much less would be sufficient, yet, were it necessary, I would appropriate the same, I would appropriate double, the sum, to promote the execution of the laws. This should be the great foundation which I would lay, broad and stable, before I contemplated any other work of political or social utility. Were I the legislator of a free people, perceiving the duties that attached to me; could my mind be raised to the proper elevation of the post, I would try, with unceasing anxiousness, to impart the benefits of well dispensed laws to the great constituent body that had put me there. I would not sleep while I heard the complaint of a single one of my fellow citizens that he could not obtain justice. Upon such a subject I would strive in every way to get enlightened. In this peaceful land especially, whose founder obtained again the name of Lycurgus, it should be my constant concern to establish institutions which

should prevent, for ever, the reproach of injustice being among the people.

The settlement of controversies by arbitration, as a substitute for deciding them in courts, is a favourite plan with many of our intelligent citizens. That this plan is, in many respects, a good one, and been attended with the best effects in practice, here and in other countries, experience has often shown. I would, however, take this distinction. I would make arbitration the concomitant of other modes of ending disputes; but would hesitate at conferring on it a compulsory existence. It is an admirable auxiliary in the administration of law; I would give it every encouragement, permissively, to run hand in hand with other tribunals. It would be getting to an improved state of society to find this method of ending disputes become, by voluntary use, so familiar to the manners of the people as to supersede a resort to public courts. But I would wait until habit had matured this state of things, entertaining, at the same time, less confident hopes than could be wished, that the disposi-

tions of mankind will admit its speedy arrival.

The law passed at the last session of the legislature, upon this subject, has made an important alteration in our civil code. A resort to arbitrators to settle a controversy, is no longer, in Pennsylvania, a thing of choice. It is one of compulsion. No matter what the magnitude of the cause; whether it be for the lowest or highest infringement of right; whether for an attack upon liberty, or any gross aspersion of character; whether the suit be for debt or damage; for one dollar or ten thousand; in every case, without an exception, it may be withdrawn from the court and submitted to the cognizance of arbitrators. This plan of compelling the citizen to leave the tribunal he has chosen to go to, and have his cause decided in another way, deserves to be carefully considered before it becomes permanently adopted. It presents a feature in jurisprudence probably not known, in the same extent, to the public laws of any ancient or modern country. Although I would not, on this account, reject

it, if it be found beneficial, yet, it naturally inspires caution, and should lead us to reflect upon its advantages or disadvantages before it is made permanent. None of our sister republics about us have adopted it. We are the first to give it trial; so that, in any observations upon it, we have only to look to our own short experience with such aids as may be derived from reason. Every dispassionate mind will wish to arrive at correct information upon a subject so important; and every patriotic mind will embrace, or reject the plan, as reason shall appear to operate in favour of, or against it.

Although this law passed in the winter it has been in operation only since the first of last June. It extended to every cause then depending, as well as to all to be brought in future; giving to either party the right to compel his opponent to remove any suit from the docket of any court, and have it decided by arbitrators. I believe it will be admitted, that one consequence universally followed. The law was resorted to by every defendant, who had a bad cause, as an instrument of delay.

This was a use that could obviously be made of it. For, after his cause had been taken before arbitrators and been, by them, decided, the party could still, by an appeal, take it back again to court. It was natural that the law should, in this way, be used for delay. Where a man was conscious of having kept another out of his debt and perceived the time of the cause being tried draw near, it is to be supposed he would lay hold of any thing for a longer respite. Coercive arbitration gave him every convenience for doing so. No excuses need be feigned; no swearing to the absence of witnesses stood in the way. He had only to tell the plaintiff that he chose to refer his cause; he then saw himself safe until another term, or longer, with all the intervening chances of sickness, accident and death to look to for a final escape. There is no incompatibility in what is here stated with any thing before remarked. Need it be said, that, although causes are so delayed in our courts, a great number is nevertheless tried. Public records will attest, that, the court of common pleas for the

city, at a single adjourned sittings, which never lasts longer than six weeks, have been known to bring to a final settlement, by verdicts, judgments, or otherwise two hundred causes. This indeed is about the average number finally disposed of at every sittings of like duration.

Such a fact shows that while there are, almost so many thousand, defendants who escape, or ward off, for years, just claims upon them, there are yet many hundred to whom the day of trial comes. Nor let the opportunity be lost of remarking, whether the number of causes thus disposed of, by one court, does not hold out encouragement for the establishment of more.

Every defendant then, as plain reason, independently of the fact, would tell us, who knew his case to be bad, was furnished by the arbitration law with an opportunity of giving his injustice a new whet, his litigiousness a longer run. It is also a part of the argument that this evil is not at an end, but must exist as long as the law. In the court of com-

mon pleas for the city, but, more especially in the supreme court, which still retains an appellate jurisdiction, and all the observations in these pages I would have considered as applying chiefly to the first district; in these courts, certainly in the latter, there is a species of causes known by the name of *young causes*. By this is meant causes that have not been more than *two* or *three* years upon the docket. In such a cause the defendant need scarcely give himself the trouble to attend court. Or, if he should, it is not under the most distant expectation that his cause will be *reached*. As it gets on towards manhood which is, say at the fourth or fifth year, the defendant must begin to look about him; the danger presses; it *may* be reached. But now, such defendants have a new consolation before them. The arbitration law has stepped in; they may now always look to at least one term's additional delay, to be counted upon as certain, without making any allowance for the mischances that may rise up before the cause can get back again to the docket, in the shape of

an appeal, after it has been before the arbitrators. This objection of additional delay is incorporated with the law. Upon pending, and upon all future, causes, its operation will be the same. There is no appointed time at which either party is obliged to notify the other that he means to refer his cause; so that he who intends to pursue that course has only to lie by until he at last perceives a prospect of his cause being reached, and then, by making his election to go before arbitrators, be sure of gaining more time.

This law has given, in every case, an appeal. Such a provision in it could scarcely have been omitted. Here an argument may be introduced which would seem to strike at the very root of its utility. When we consider the leanings of every man in favour of his own actions; the reluctance with which he parts with property or surrenders up fancied rights; when we know how common is the passion of interest, and even of obstinacy, we can hardly be wrong in imagining that, in a majority of all the cases submitted to arbitration, the party

against whom the decision goes will incline to have another hearing. Independently of the wish to gain time, an acquiescence in the unfavourable award of any tribunal, whatever may have been the belief in its impartiality, is not often to be calculated upon while ready access may be had to another. The remark is the more just as applied to a decision by arbitrators. Here the losing party may have had several voices in his favour, though the majority, who fix the award, were against him. This holds out to him a semblance of right more encouraging than after the verdict of a jury, which must have been unanimous. But, leaving these conjectures, one thing may be taken as certain. Where the party who has been brought, against his will, into the arbitration, loses, an appeal may always be looked for. It will not be supposed that he who went to a court with his cause, intending that it should come before a jury, and who was drawn away, by force, to a different tribunal where a decision takes place against him, it cannot be supposed that a man in this predicament will fail to go

back again to that tribunal which was the object of his first choice. Here the argument strikes us which appears to be radical against the utility of the law. One of its objects unquestionably was to give expedition to justice. But, this object will never be gained where an appeal takes place, a suit, in that event, being placed, in regard to expedition, in a worse, rather than a better, condition. It comes back again to the court; resumes its former position on the docket; nothing that passed before the arbitrators is to prejudice it one way or the other; it stands with presisely the same opportunities of trial, and none other, than it had before it was removed. Now, as it seems demonstrable, that, in cases where the party, *compelled* to refer, loses his cause, there will be an appeal, where is the use of the law? It will be recollected that, if the arbitration take place by the *agreement* of each side, it becomes a case in which the law was certainly not necessary. The transfer of causes from the court to referees was a thing of every

day's practice in every part of the state before this law passed. Done by consent, to be sure, but done under the sanction of former acts of assembly conferring upon these amicable tribunals, wherever the parties made choice of them, as useful an efficacy as they probably ever had in any country. It required therefore no new law to secure the benefit of an arbitration where *both* sides were willing the cause should be determined in that way. The advantage of this kind of trial, voluntarily gone into, had been every day experienced. There were many causes which, by such method alone, could be adjusted, and the citizen knew how to avail himself of its aid. Even when causes were referred by mutual consent, it is worthy of remark, that, in perhaps one half of them, as general experience proved, there were appeals. The argument then seems unimpeachable, that, as to every purpose of expedition, the law becomes unavailing in consequence of the right of appeal.

This objection goes to the law being unnecessary. There is another, connected with the

doctrine of appeal, that may be regarded as more serious. The security to be given before an appeal is allowed will be found to be rigid. The effect of this may be to place the parties upon unequal ground. The man in narrow circumstances, or low credit, though his cause may be good, may have difficulty in obtaining this security, or not be able to get it at all; while his richer antagonist can offer it at pleasure. This, in fact, may sometimes make the decision of the arbitrators final, be the nature of the cause what it may; a consideration not belonging to our cautious doctrines of civil right. It will not be said that the man unable to procure security, in this instance, is in no worse situation than he would be if arrested and obliged to give bail in any common case. It may often happen that he will be called upon for security after a decision by arbitrators in cases where, by the general law of the land, it could not have been demanded of him if the cause had remained in court.

From a view of the subject thus far it would appear, that, as to the great object of the law,

the unfettering justice of its delays, nothing will be gained. No man being debarred the privilege of taking his suit back again to the still uncleansed docket of the court except he, who, from poverty or not being known, may be unable to find bail.

There is a consequence obviously attending this removal of the cause from the court to arbitrators and then back again to the court, which forms an objection to the law. A plaintiff after having had a just claim determined in his favour is likely to be exposed to the additional trouble, the additional loss of time and the additional expense of trying the same cause over again. After having been before arbitrators, who, in a litigated case, may have sat every day, on their own adjournments, during half a week; after having undergone the solicitude, the fatigue, of collecting and keeping together his witnesses all that time; after having feed his counsel anew for several days' attendance, it may all be to do over again; an appeal takes place, and witnesses and counsel, time, money, and trouble, are all to try their

efficacy again before a jury. This is not fancy; it is fact. A glance at the law will show it. Short a time as it has been in operation, the records in the prothonotary's office in the first district already attest that, in most cases, appeals have been entered; thereby realizing the evil alluded to. Every reflecting mind will view this exposure to double labour and double expense, inseparable from the law, as an objection to its expediency.

To lose sight of the litigant, this law will be found inconvenient to the citizens at large. It will be the means of injurious and troublesome interruption to their private business. It has already happened, and, as long as the law is in force, must continue to happen, that the same men will be frequently called upon to perform the duty of arbitrators. Some will find themselves chosen every month, perhaps every week, in the year. Men known to their fellow citizens for their skill in business and their integrity, will be particularly exposed to frequent selection. I am sure that, among good members of society, there would never

on these occasions, be any disobliging backwardness. But I cannot help thinking that the law will, in this respect, be found burdensome. The mechanic may grow weary of leaving his workshop, the merchant his counting house, the farmer his harvest fields, to settle the altercations of other men. They will get tired of sitting for hours, perhaps days, surrounded by papers; engaged in the investigation of long accounts; determining, by anxious calculations, the quantum of damage done to property or reputation; and perhaps all the while crouded together in some close uncomfortable apartment.

It is no answer to say that this loss of time is also incurred by serving on juries. In the first place, to bear in mind the appeal, it is plain that where this takes place, the arbitrator has had so much trouble for nothing. No good comes of it, and he may even chance to see his name in the jury box for the very same cause where he has once been an arbitrator. But, in the next place, serving as a juryman, will be found less inconvenient than

the other. Put it to the choice of any man whether he would be more willing to serve one entire week, or even two, in the year, statedly, as a juror in a public courthouse; or be liable, at all times, throughout the year to be called upon as an arbitrator; and I apprehend nineteen out of twenty would take the former. It is observed in our country, and the more as you get out of cities, that the duty of a juror is one which, in general, is gone through with cheerfulness. It points to the character of the people; is a mark of the satisfaction the citizen of a free community has in bearing his part in the public distribution of law, and in listening to the occasional expatiations upon civil right drawn forth by forensic discussion. In estimating the comparative burden to the juror and arbitrator, let it also be recollected that the former cannot, by law, be called upon more than once in the year. His tour of duty performed, he is sure of being excused for a time; and it may happen that several years may pass over before he gets another summons. But the arbi-

trator never sees the end of his service. He is every day subject to a fresh call, and cannot plead any former discharge of duty in exoneration. The difficulty of getting arbitrators together in the first district has already been an obstacle to the execution of the law. Citizens have complained that they have been notified to attend on more cases than their private business would allow. In many instances not even a majority have been present, and inconvenient and expensive adjournments have been the consequence. Men of business purchase their exemption by a cheerful payment of the penalty. Impracticability to execute it, though only occasional, must stand in the front of objections to any law. The one under consideration, however well contrived it may look to the ingenious mind of a speculative jurist, is found, on experience, to be chargeable with this defect.

The difficulty of getting witnesses before this body also impedes its operations. The law gives no power to the arbitrators to enforce

their attendance, their authority to issue process for that purpose ending with a subpœna. Perhaps it might have been incautious to have gone farther, though the want of more compulsory means must be felt. The subpœna of the arbitrator too, is found to carry less weight than the subpœna from a court, followed up as the latter can be, in case of refusal, by attachment of the person.

But grant that the arbitrators and witnesses are all punctually assembled. This *manner* of deciding all causes, and the *places* where it will be done, seem exceptionable. Three or four men sitting together in a room do not impress me very deeply when I talk of the serious concerns of justice. I know how many respectable citizens have been placed on these arbitrations. But I also know, how, through oversight or ignorance, others may sometimes find their way there not so well calculated to give the proper dignity to such meetings. I am not about to advocate the ceremonials of office, the robes of an English judge. I think

an incorruptible heart the purest ermine. But, it may be a little superstition in me, when I come with an anxious bosom to attend the trial of my cause; impregnated with the sensibilities which have been excited by a deep stake in reputation or property; fraught with a complaint that has long throbbed to make itself known, and find only two or three men in a little room, round a small table, or with their feet at the fire; a sort of concern overtakes me; I am afraid they are not prepared to come up to the tone of my own feelings; that they will listen to me to be sure; but I seem to doubt whether with those impressions to the importance of my case, which, by long brooding, I had myself, perhaps improperly, cherished; and a wish crosses me at the moment, from a sensation I cannot stop to analyze, that my cause could be tried some where else; in some hall more venerable; whose walls had before witnessed the vindication of innocence; where publicity, where space, where the presence of my fellow citizens might help, by their sympathizing countenances, to strengthen

and spread the feelings which pervaded my own breast. Perhaps these are prejudices, but I cannot rid myself of them.

But, to the *place* of meeting, I have far more objection. Of this I openly complain. For where, in most cases, will it be? In taverns,—exposed to all the sources of detachment from business which there prevail. The attribute of justice is the attribute of heaven. And, shall its ministers be found assembling in places at other times the scene of intoxication and of noise! In taverns, where are associated all the recollections of convivial, it may be of impure, jollity! convert the bar rooms and alehouses of a whole country into justice seats! If arbitrators must be the judges of the land, at least put up buildings for their accommodation. Let this improvement in jurisprudence be carried through. Erect edifices in every township with apartments of suitable number and convenience where they may meet; and where silence, where solemnity may impart a calm equal spirit to the functions within. Was it in anticipation of this evil, that a part of this law, in a language

altogether new, provides that the prothonotary shall select three or five disinterested, reputable and *temperate* persons! In reference to the arbitrators a caution I hope not necessary—I do trust it was unnecessary. But I am filled with anxiety at the temptation thrown in the way of suitors, of witnesses, of attendants. I do not wish to see our citizens so frequently at taverns; collected for a necessary purpose, with motives ostensibly good; with motives really good, until accident and opportunity have given them another direction. I cannot impute it to imaginary fear if I give way to the thought, that the habit of assembling the people at places of convivial rendezvous may come in time to have an influence upon morals, and produce evils not to be outweighed by all the benefits of arbitration.

I do not speak of the expense of meeting at taverns. Important as this will often be to the parties, it is but a secondary view of the subject. Adjournments from day to day, the price of the room, suppers, dinners, refreshments, attendance, all this will swell the bill. It already has

appeared that the costs of only one or two days' sittings on an arbitration at a tavern, have been much greater than would attend upon a suit, through all its stages, in the court of common pleas, though it had been years upon the docket. And it will be perceived there are contingencies that may increase, still more, the expense of this mode of trial. If justice should not only be expeditious but cheap, a well founded objection rises up to its administration by these tribunals.

I will not make the rules that are to govern the proceedings on an arbitration a topic of discussion. The three, or the five, men who are to sit on one day as arbitrators, may be intelligent and skilful. The next there comes a set far less so, and no court to lend its assistance. I allude not to the consequences hence resulting. Of the different rules of conduct that may be laid down, so as to leave the people in doubt as to the line of civil duty. This would lead to a wide discussion and is aside from the views, to which I limit myself, of the merits of the arbitration system. I speak, rather, of its external disad-

vantages. I am not the champion of the absolute perfection of our code of law. I never expect to see such a one coming from the hands of men. But, appoint a sufficient number of judges; let your whole care be exerted in selecting proper ones; let them be known to their fellow citizens for their virtue, their abilities, the purity of all their principles; it would be the reproach of the country if it contained none such, and I do believe that the general laws of the land, expounded and dispensed by such judges, would be likely to carry with them more certainty, and at least as much, justice, as the law established by arbitrators.

In a course of observations like the present the profession of the law can scarcely be passed over. But how to touch it? So much has already been said, so much already written. The subject has shared the fate common to most others treated with the feelings and the views of partisans. Believe the assailants of this profession, and it comprehends nearly every thing that is corrupt and rapacious. Trust to its champions, and it has a monopo-

ly of the talents, the learning, perhaps too, the virtue, of the state. Nothing can be more evident, to the dispassionate mind, than that these opinions are in an extreme; the latter, to say nothing else of it, a most unbecoming stigma upon all other classes; the former, not candid or just. That unworthy individuals, who disparage the very name of law, find their way into this profession, is true. It is not only complained of, but felt, as an evil. And perhaps the legislature might here lend its aid. Perhaps, in the form of instructions to the courts, it might fall upon some means of guarding the entrance to this profession. Perhaps the previous examination of the candidate might be made more public and solemn than now takes place; be made to embrace a careful scrutiny, as well into his moral habits, as his mental qualifications. There would seem to be a propriety in applying some such test to a person who may become so largely the trustee and agent of his fellow citizens in concerns that are important. Nor, would there be any abridgment of personal right, in such test. The attorney is

himself recognised as an officer, and enjoys certain privileges. It would therefore be but an equitable reciprocity for the law, in its turn, to sift the pretensions of him whom it clothed with any immunity. The candidate who had nothing to fear would never complain of the scrutiny; and he who had any apprehensions, either on the score of probity or education, ought to have the doors of public confidence closed against him. Some such course as this, which legislative attention could mature, might do much towards curing an admitted evil. If I am rightly informed, regulations, embracing the principle of the foregoing hints, obtain in some of our sister states. The attorney of loose morals and uninformed mind; who hangs about the bar and lives upon trick; whose obscure glance is along the margin of his law books only for traps and nooses; who talks, thinks, and dreams, of nothing but his fee, is, indeed, mischievous and despicable. It is often matter of regret that such a character can be handed over to no other punishment than the neglect and contempt of the respectable part of the

community. But does this character take in the whole profession? Will the liberal man pretend it? Are there not found in it men of distinguished minds and pure lives; who give themselves to the study of the law as an enlarged science, rising to the elevation of its theory, and who know how to dispense the generosities of its practice; men entitled to the confidence of their fellow citizens and useful to society. Have we not seen individuals of this profession, from the days of ancient republics to our own more boasted revolution, the able and bold defenders of the people's rights; standing in the very advance of liberty; ready, with their pens and their tongues, to give the alarm even at distant encroachments upon her bounds—patriots, who, in senates and forums, have had and deserved their country's praise.

But the view with which I allude to this profession is merely as it connects itself with the arbitration law. Some of the opinions offered upon this law in the course of the foregoing remarks may be considered as conjectural.

Some may strike other minds differently than the writer's, and be thought wrong. Others appear to be inherent in the system. But, as to one point, there will be universal agreement. That this law has increased the business of the lawyer admits of no doubt. The experience of a summer has rendered this fact incontrovertible. In the first district, every week, every day, has shown it. The preconceived opinion that suitors would manage their own business and try their own causes, before these tribunals, has not proved to be the case. A few will do so, but the number has been, and will be, small. It is to no purpose to say they *could* do it as well themselves; perhaps, in most cases, they could. But the truth is, however strange it may seem, they do not, themselves, think so. Men, when their property is thrown into danger, are apt to feel a timidity, as well as solicitude, which leads them to seek assistance. They are unwilling to rely wholly upon themselves. They naturally resort to those whom they suppose capable, from the more frequent practice of business or more exercised powers

of explanation, to afford them useful aid. And, if a man, from any cause, be impressed with a notion of his incompetence to manage his own business, which his real powers do not warrant; or if, from indolence, he be unwilling to take it upon himself; where is the law, or where is the policy that should prevent his bespeaking, in his behalf, the industry or acuteness of another. To be hour after hour among bonds and deeds and accounts; to keep attention whole days upon the stretch; to be examining witnesses, perhaps writing down testimony, and all this may have place before arbitrators, is a sort of employment in which the farmer or mechanic, will generally incline to have an assistant.

If the lawyer be taken before the arbitrators, what is the consequence? It necessarily is to double his employment and double his fee. He first brings the action in court; for, it must be pending in court, to authorize an arbitration. He gives it his attention there. It is to be withdrawn and sent to arbitrators. The attorney is resorted to, to say what are

the preliminary steps. For here again, simple as these preliminary steps are, the attorney must be at call. The mass of men will not care to find them out; will not attend to them; will say they know nothing of law. Well, the attorney tells him what he must do—the rule of reference to be entered—copy to be made out under seal—to be served on opposite party—where left if he be not found—how many days notice in the city—how many in the county—proof of service—and so on. Then the arbitrators are to be chosen—the sometimes perplexity in this,—he's a good man—he won't do—I'll take him—until the prothonotary, at last, has to settle the difference. The arbitrators chosen, are next to be notified. Who gives the notice? the party himself, to be sure. What, an't there some sheriff or deputy whose duty it is?—they may live miles apart! Never mind, the party must give notice to them all—horse hire and chair hire will soon do it. When this is all done the meeting is to take place, and the last word the plaintiff says to his attorney is, that he must be sure and be there. The attorney,

taking note of the place, whether by the Sweed's Church or Hay-Scales—whether at the sign of the Bowl, the Ship, or the Cross-Keys, is punctual. But how? will he spend the whole day at a tavern for nothing? it is not expected; the client does not ask it. He considers the reasonableness of additional compensation, and pays it. The parties all assembled, the bar room is got in order; or the big dining room; or No. 4, upstairs, as it may be. The trial begins—closes the first day, or lasts two or three. The arbitrators get fatigued; but at length a decision takes place—a just one. Now mark the end. We spoke of the attorney's double employment. The party who lost his cause declares he must have an appeal. The appeal is granted. And thus, after all this exertion and expense; after this first scene of notices, subpœnas, hearings, adjournments, and decision, the parties go back to court; the attorney takes his stand at the bar, and is called upon, by the offer of a new fee, to try again the very same cause, over which he has already wasted interrogatories and harangues for whole days at Mrs. Savill's in Spring Garden.

This is not intended as a light; it is a true, picture. A record of experience with not a deviation. The result is to establish, unerringly, that the burdens of this law are upon the client, its profits with the attorney.

The effectual way to lessen the number of this profession would be, to establish so many respectable courts as would promptly do the business of the country. It is a striking fact, that, as the obstacles to justice have increased in this state, within the last seven years, the bar has also increased. On this fact the reasoning is simple. If we had courts in sufficient number to terminate all causes, in a short time after they were brought, men would grow more punctual in paying their debts. If the judgment, or trial, came, smartly, upon a defendant in six or nine months, he would, more frequently, see his interest in acting as he ought to. But when he has three or six years before him, with all their contingencies, it is encouragement to him to go to law; and, when the litigious man seeks out an attorney, it imposes upon the just one the same neces-

sity. This is obviously one of the causes of the demand in which we find this profession among us. For, although the laws are so defectively executed in this state, there is good information for saying that the number of lawsuits constantly on the docket, in the first district, is probably double the number to be found in any other district of country throughout the union of the same extent.

All the preceding remarks upon terminating disputes by arbitration, cast, coercively, upon the people, are made under the most serious belief in their truth. They are made with a hope that they may draw the attention of other minds to the subject, that a concern of so much importance may come to be considered by men able to consider it, and in the lights it deserves. It is the remark of a profound writer that "we are to look upon all the apparatus of government as having ultimately no other object or purpose but the distribution of justice." Undoubtedly it is of momentous concern. Nothing goes so far towards fixing the character of a people. It blends itself

with the duties of every day: comes home to the business and bosoms of all: makes good or bad neighbours; good or bad men. At last it determines a people's fate; whether to be spoken of in history as dissolute and foolish; or wise, peaceful and happy. In Pennsylvania it should be dwelled upon with seriousness. It should be considered without favour to any former opinion. The desire of truth should be the only guide. It interests us deeply. We should feel it as citizens, fathers, christians. Let the great aim be to relieve the people from the evils of badly administered laws; the only question, which is the best mode; the only object, to secure it. Never mind the expense. It is not worthy to be thought of. The state is populous, and, for such a purpose, will be found willing. Look at the tax list. The land tax, the county tax, the city tax, the tax for lighting, watching, and paving. The citizen pays it all. But I would stop the building of bridges; I would let the highways go unrepaired; I would suffer cities to remain dark, before I would neglect the administration of the laws. Below

this every thing should rank; to this every thing do homage.

The suggestions heretofore offered against the expediency of coercive arbitration, now made so essential a part of our jurisprudence, are chiefly such as experience has pointed out. The best discernment cannot always foresee the practical effects of any new statute. So it has fallen out with this. Candour calls for the admission that some of them, as they are peculiar to the law, might be obviated by a reconsideration of it. Others are so fastened in the body of the system as to be incapable of retrenchment.

An objection is yet to be noticed more fruitful than all the rest. An objection lasting in its nature, because growing out of the characteristics of man. It is the objection derived from the great and important principle that the administration of justice, in every free country, should be *public*. It should pass before the people. It should come from tribunals that are conspicuous. Where this is the case the motives to purity are increased, because

animadversion falls sooner, and in ways more imposing, upon any abuse of its duties. This single view of the subject opens a wide field of reflection to the political philosopher. Men are so formed that temporal sanctions must concur with moral obligation to influence the performance of duty. The eye of the world, openly fixed upon conduct, is of powerful force in its regulation. It is remarkable that, in all ages and countries, where the institutions of government have grown corrupt, the engines which move them are withdrawn from the view of the people. The dreadful superstition of Spain is worked by machinery concealed and mysterious. The judgments of the bastinado are first made known by the cries of him who suffers under its sentence. Not that I would liken these instruments of state and religious vengeance to any thing that is to take place in this land, or under this law. But the principle presents itself. The anxious mind cannot avoid the thought that, as the utmost oppression is found to grow out of the hidden execution of arbitrary will, laws that

present nothing but a face of freedom should fly to the opposite extreme of publicity and light. And I would guard against every, the least, infringement of this noble attribute of a free code. I would hesitate even at permitting arbitrators, virtuous as they may be at this day, to meet at private places, with but few people about them, and where all their judgments go unrecorded and unpublished. I would hesitate how, as the regular and enforced ministers of justice, I permitted them to familiarize us too much to the private administration of our laws. I do not think it stands with the true dictates of republican liberty. And, although, under this head, I have not, at present, any fears, of practical mischief, yet, on a full consideration of the subject, I would refrain from starting a principle out of which I thought evil might ever come. In a public court, respectable for the characters of its judges; sitting in the face of the world, there will be a responsibility upon the suitor, a responsibility upon the witness, upon the counsel, upon the juror, upon the court itself, not felt, in the

same degree, before the other retired tribunals. It is here, before a bench venerable for its dignity, that truth comes out by the solemnity which is inspired; that men are touched by the impressions of a useful awe; where nothing base is seen; where subterfuge and disingenuousness cannot show their front. The judgments of such a court are made known to the world. They pass from man to man; and, the good man, as he sees their general benefit, lays it to his heart to give them his approving voice.

As some illustration of these principles, I would remark, that, in the subordinations of justice, as you get down to those persons who are removed from observation, more of real oppression is discoverable. I question if there be any person into whose hands accident may throw these pages, who may not be able to recollect, as falling within his own personal knowledge, some instance of cruelty or hardship unnecessarily practised by some constable. The breaking in upon some poor family with rudeness and alarm; seizing, with ter-

rifying harshness, the bed and little furniture; or hurrying the man off to gaol with cuffs and insults. Very few people see this constable or know any thing about his business; and therefore he gives himself no concern. He returns his process to a justice up in one corner of his room; nobody is by; nobody complains; so it passes off, and away posts my gentleman with his club under his arm. Had he been obliged to appear before a public court and give an account of himself, he would not have dared to act so. A useful fear of correction would have held him in check. Throughout the whole state, sheriffs and sheriffs' officers are observed to be much more gentle, though more faithful, in executing process than constables. It is in the by-places of the world, where the legislator does not go, that misery is felt without its being known. Let a citizen be detained in prison an hour beyond his appointed time, by a public court, and it spreads, as it should, in tones of alarm, throughout the country. But let him fall into the clutches of some obscure, petty tyrant; there is then nobody to see, nobody to

hear, nobody to make known his sufferings, and he perishes.

As falling under this great and universal maxim, the public administration of the laws, the subject enlarges. It becomes still more interesting. Allowing to arbitrators the full merit of intending to do justice, there are causes that ought never to be placed in their hands. There are causes where public policy concurs with private right, in holding out a more imposing mode of investigation. Suppose a case of atrocious seduction; suppose a case of atrocious slander; and remember, that the public exposure of guilt, by a public trial and public discussion, becomes a part, often a large part, of the offender's punishment. Would you have had such a cause as John Hambden's taken before arbitrators? How many causes are there in which the individual is lost in nobler thoughts? Where a thousand bosoms beat on the issue of a principle; a thousand tongues are busied with rumour? And yet, the Pennsylvania arbitration law, how shall we limit our regret! the Pennsylva-

nia arbitration law, hands over every cause, with not an exception, to the private sittings, to the private conversations of a few men. What chance, exclaimed Patrick Lyon, what chance should I have stood with the bank, before arbitrators, cooped up in the bar room of a tavern? Let me, for the sake of the principle, allude to this honest citizen. A recital of his case may not be useless.

Patrick Lyon was an ingenious industrious mechanic of Philadelphia. In one of the yellow fevers, the vaults of the bank of Pennsylvania were broken open, and a hundred and sixty thousand dollars taken out. Lyon had been doing some work there in the line of his business and was taken up on suspicion of the theft. The charge was a shock to him, for, until now, nobody had ever breathed a word against Patrick Lyon. He was sent to gaol. He was blasted to his fellow citizens as a robber. He was put into a dungeon. With dreadful weight was likely to fall the blow from such an institution. After a month's suffering he got out. He left his dungeon and

went back to his family. An indictment was laid against him. He was ready to meet it. But there was no guilt in Patrick. A grand jury soon found that and told the bank so.

And next for his redress. He had been hurried from his home, imprisoned, insulted, wronged. But how should he get redress? He goes to his counsel and tells his story. His counsel advise a suit. How, it might have struck him, *I* bring a suit; *I*, a poor blacksmith, against the officers of a bank! Think of their power, their means; what is to become of *me* in such a contest! No, I can bring no suit against the bank. You are wrong, say his counsel. Trust to your fellow citizens. You were innocent, and have been injured. Our laws are for the weak. Try them. Patrick brings his suit. He goes to the supreme court. His cause is a long while depending, but the day of trial arrives. It was indeed an interesting one. On the one side stood power, wealth, influence, confidence. On the other a humble citizen, no claim but his merits, no friend but his innocence. All of us remember the day.

How the courthouse was thronged. The silence of the spectators. Their looks from the galleries and benches. His counsel rise. They describe his sufferings. They speak of his character so long known to have been good. Of his sudden arrest; of all that followed; of its effect upon himself and his family. They call upon the jury to consider his case. That he is a poor man. In eloquent, in bold, in fervid terms they are called upon to vindicate the sublime equality of the law. The throb of the hall begins to enter the jury box. They begin to feel the dignity of principle. The generous parts of their nature rise. They warm as the trial advances; with the further picture of hardships and insult. The countenances of all gladden as Patrick is seen rising higher on the ground of innocence and justice. At length it closes. And the jury, not to compensate him in pocket, for no great loss in that way was pretended, but to make him the only satisfaction they could for his wounded feelings; to give him some balm for the long agony of suspended reputation, THE JURY—return with

their indignant verdict; and mulcted these defendants in *twelve thousand dollars* for having touched the peace of an honest man.

How beautiful is justice under such a form! Would you, as Patrick said, have had such a case before arbitrators? Where would have been the solemnity that belonged to it? the public feeling that so helped to draw out its importance; the public anxiety that so assuaged the plaintiff; the public eye, which, fixed upon the defendants, made such a part of his redress? Where, the public discussion, the crouded lobbies, that passed the circumstances of this case from man to man, exciting, in the bosoms of thousands, a personal interest; making it a subject of conversation in the streets. No, it would have gone off in silence. Even if arbitrators had given him an award for as much money the sympathy, the congratulations so dear to him would scarcely have been known. That affectionate concern of his fellow citizens, which the public trial drew to a focus and heated to explosion, would have passed away or been heard only in the feeblest accents. There

would have been no public plaudits, no tokens of joy, to ease the heart of Patrick.

Are you then, citizens of Pennsylvania, afraid of a jury trial? Does not this single case furnish a thousand answers? Afraid of a jury trial! Who are the jury? Strangers, enemies, slaves! Are they not your very selves. Whence are arbitrators taken? from the people. Whence a jury? from the people. The *five* men at one tavern as arbitrators, and the *seven* at another, bring them together and would they not give you a jury? The very same men! Who tells me of fears? When a tyrant of Europe thought to trample upon our fathers, what did he do? Did he not try to take away their juries; and was not this one of the causes for which the American soldier fought at the walls of Quebec and on the sands of Georgia? We admit that, since those days, this kind of trial has fallen into great, I had nearly said into deserved, reproach. The people have become dissatisfied with it; and no wonder; they have had their reasons; we have had so few courts; they have been so utterly incompetent to the public business, that the benefits of a jury trial

seem to have passed away. Only its supposed delays strike us. But the system is the same now as when the revolution began. Give it a fair chance and it is a noble system. As an advocate for liberty has said, "a jury is the most refreshing prospect the eye of accused innocence ever yet met in a human tribunal." Poor Patrick Lyon had to wait six years before his cause was tried. And did his wrongs go unredressed all this while? Yes, six full years. But it could not, surely, have been the jury's fault! Their conduct does not tally with an intention to put him off. No, the jury was no instrument in his delay. Nor is it in the delay of any man's cause. The plain reason why it was not tried sooner, is that the docket of the court was so loaded it could not be. There were so many hundred causes before it; so many plaintiffs waiting, gasping, like himself, for justice, whose claims were earlier, that he could only have his turn. He waited for years until his cause was *reached;* and so must every man until there are more courts. But, had there existed a sufficient number of courts with

ample capacities for business, Lyon's cause might have been tried in nine months. It would have been tried in that time. The people of Pennsylvania cry for justice, in vain, until years have passed over. This has long been, this is still, the case. Their merits, their wants, their sufferings join in imploring relief from the legislature.

Judge Wilson, in one of the volumes of his works, has a remark with which I have been struck. Referring to a jealousy which appeared to exist among us of judges, he expresses surprise and offers this explanation. Before the revolution the British king appointed our judges. The members of the house of assembly, on the other hand, were chosen by the people. This caused the latter branch to be the favourite with the people, and the judges to be looked at with such well founded suspicion. But now the whole system of things is changed. Judges are no longer set over us by a crowned head, whose subsequent conduct showed his design to enslave us. They are taken from among ourselves; and, when care-

fully chosen, should as naturally share our confidence and our pride as either branch of the legislature. But the habit of jealousy, resting on such good ground at first, does not appear to have been wholly shaken off. This is his remark, and it seems to be more than ingenious. For who are now our judges? Men selected by a branch of the government put into office by the immediate votes of the people themselves. Men liable to be displaced as soon as they misbehave; or, as soon as the representatives of the people shall, by their application to the executive, will it. How finely is our republican fabric woven together! On the just theory of a free government I know of nothing so beautiful as the judicial part. The people's sovereignty, presenting the aspect of justice, is a most interesting object of contemplation. When that sovereignty is seen in a legislature, when it is seen in the executive, it is indeed grand; but the objects throng; they press upon the sight. It is beautiful when looked at on a bench of justice doing its silent duties; handing out

right to the citizen; hearing his complaints; making himself and his family happy.

To Pennsylvania I would raise my feeble voice and say, establish more courts. The necessities of the people ask them at your hands. Other methods have been tried to remove the obstacles from justice, which have not, hitherto, done so. Now make the experiment of this. If a few years should determine against its policy, to abolish them rests with yourself. But at least make the experiment. Let your judges be carefully chosen. Let them be men whose integrity, whose entire qualifications are approved. Do not fear to lay out money. It can be expended on nothing so well. If asked to give it away upon objects useless or hurtful, a provident watch over the public treasure would, at all times, be expected of you. But in so deep a concern as this, the first question should be, how is it to be obtained; not how much will it cost. When Phidias was about to make the statue for the temple of Minerva at Athens, he was obliged to give an account, to the assembly of the peo-

ple, of the materials he intended to use. He himself preferred marble, because its beauty would be most permanent. So far the people were pleased. But when he spoke of its cheapness also, and mentioned that as a recommendation,—stop, said they; let the statue of our goddess be of ivory and gold. Pennsylvanians, will you refuse a bare sufficiency to justice!

A CITIZEN.